

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANIPLEX, INCORPORATED,	)	
a Japanese corporation,	)	
	)	2:08-cv-00442-HDM-PAL
Plaintiff and	)	
Counter-Defendant,	)	
	)	
vs.	)	MINUTES OF THE COURT
	)	
THE UPPER DECK COMPANY,	)	
a Nevada corporation,	)	
	)	September 26, 2011
Defendant and	)	
Counterclaimant.	)	
	/	

PROCEEDINGS: JURY TRIAL (DAY 11)

PRESENT:

THE HONORABLE HOWARD D. McKIBBEN, SENIOR U.S. DISTRICT JUDGE

Deputy Clerk: Paris Rich

Court Reporter: Kathryn French

Counsel for Plaintiff:

Michael Firestein and Joshua Pollack

Counsel for Defendant:

J. Stephen Peek, Robert Cassity and Craig Nicholas

At 8:25 a.m., the Court convenes.

On behalf of Plaintiff, Michael Firestein and Joshua Pollack are present. Also present at Plaintiff's counsel table are Asa Suehira (Aniplex Representative) and Catherine Mirhady (Electronic Technician).

On behalf of Defendant, J. Stephen Peek, Robert Cassity and Craig Nicholas are present. Also present at Defendant's counsel table are Brittany Hysni (Upper Deck Representative), Dustin Kittleson (Electronic Technician) and Stephanie Morrill (Support Assistant).

The Court distributes a revised set of jury instructions to counsel. The court and counsel further confer regarding the revised instructions and verdict forms.

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**Plaintiff's Revised Exhibit E and Exhibit I to P-228 are remarked as Plaintiff's Exhibits P-322 and P-323 and received in evidence. IT IS SO ORDERED.**

At 8:34 a.m., nine jurors enter the courtroom.

MARVIN GLEICHER, called on behalf of the Defendant, is sworn, examined on direct by Mr. Peek and released subject to recall.

At 10:08 a.m., the jury is admonished, and the Court stands at recess.

At 10:35 a.m., the Court reconvenes with counsel and nine jurors present.

MARVIN GLEICHER, resumes the witness stand, is further examined on direct by Mr. Peek and released subject to recall.

At 10:55 a.m., the jury is admonished and excused.

Outside the presence of the jury, the Court and counsel confer regarding the Defendant's previous objection to portions of Masaki Kaifu's testimony, and the Plaintiff's objections this date to portions of Marvin Gleicher's expert testimony. Counsel present further argument.

**IT IS ORDERED, no portion of Masaki Kaifu's expert testimony shall be stricken. All portions of Mr. Kaifu's testimony shall be in evidence, including his analysis with respect to cumulative impact. IT IS FURTHER ORDERED, the Plaintiff's objection this date to portions of Marvin Gleicher expert testimony is overruled. IT IS SO ORDERED.**

At 11:00 a.m., nine jurors enter the courtroom.

MARVIN GLEICHER, resumes the witness stand, is further examined on direct by Mr. Peek and released subject to recall.

At 11:53 a.m., the jury is admonished and excused until 1:00 p.m. this date.

At 1:02 p.m., the Court reconvenes with nine jurors present.

MARVIN GLEICHER, resumes the witness stand, is cross-examined by Mr. Firestein and released subject to recall.

At 2:20 p.m., the jury is admonished and excused.

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Outside the presence of the jury, the Court and counsel address the remaining Trial schedule, jury instructions and proposed verdict forms.

At 2:35 p.m., the Court stands at recess.

At 2:48 p.m., the Court convenes with nine jurors present.

MARVIN GLEICHER, resumes the witness stand, is further cross-examined by Mr. Firestein, examined on re-direct by Mr. Peek, re-cross-examined by Mr. Firestein and excused.

**Defendant's Exhibit D-36 is received in evidence.**

**Plaintiff's Exhibit P-294 is received in evidence.**

The Defendant rests.

The Plaintiff, having no case in rebuttal, rests.

The Court addresses the continued Trial schedule with the jury.

At 3:34 p.m., the jury is admonished and excused until Tuesday, September 27, 2011 at 8:30 a.m.

Outside the presence of the jury, the Court and counsel address the proposed verdict forms and jury instructions off of the record.

At 3:57 p.m., Mr. Firestein presents an original [289] Motion for Judgment as a Matter of Law as to Defendant's Claims and Affirmative Defenses Regarding Plaintiff's Alleged Lack of Rights to the Original Kiba Property.

The Court recites findings into the record regarding the Plaintiff's [289] Motion. Specifically, 1) the December 2003 Agreement allowing Dream Ranch to act on behalf of other owners of Kiba rights; 2) Aniplex's verbal agreement with Dream Ranch relative to Kiba rights; 3) the January 31, 2006 revision of the December 2003 Agreement; and 4) the May 2007 Licensing Agreement. **IT IS ORDERED, Plaintiff's [289] Motion is GRANTED. The Court finds the transfer of Kiba copyrights valid as a matter of law. IT IS SO ORDERED.**

The Court recites findings into the record as to the fraud claim. **IT IS ORDERED, the Plaintiff's motion for a directed verdict on the Defendant's fraud claim is GRANTED. IT IS SO ORDERED.**

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Mr. Peek addresses issue of breach of fiduciary duty and, if necessary, moves to reopen or amend under Rule 15. **IT IS ORDERED, Motion to reopen or amend under Rule 15 is DENIED. IT IS SO ORDERED. IT IS FURTHER ORDERED, Motion for instruction on fiduciary duty is DENIED. IT IS SO ORDERED.**

**IT IS ORDERED, Trial is continued to Tuesday, September 27, 2011 at 8:00 a.m. in LV Courtroom 7C before Judge Howard D. McKibben.**

At 4:13 p.m., the Court adjourns.

LANCE S. WILSON, CLERK

By: /s/ Paris Rich  
Deputy Clerk